(3)

No. 91-1710

IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., GULF STATES TOYOTA, and TOYOTA SOUTH, INC.,
Petitioners,
v.
THE HONORABLE SHAROLYN WOOD, JUDGE, 127th Judicial District Court, Harris County, Texas, (M. JACK HENRY and JANET HENRY, Individually, and M. JACK HENRY, Guardian of the Person and Estate of KAREN HENRY, and RON MANNING, as Representative of the Estate of JUDY NELSON MANNING, Real Parties In Interest),
Respondents.

On Petition for a Writ of Certiorari to the Court of Appeals for the First District of Texas

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE AND BRIEF OF THE PRODUCT LIABILITY ADVISORY COUNCIL, INC., AND THE TEXAS CIVIL JUSTICE LEAGUE IN SUPPORT OF THE PETITION

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MOTION OF THE PRODUCT LIABILITY ADVISORY COUNCIL, INC., AND THE TEXAS CIVIL JUSTICE LEAGUE FOR LEAVE TO FILE BRIEF AS AMICI CURIAE IN SUPPORT OF THE PETITION

Pursuant to Rule 37 of the Rules of this Court, the Product Liability Advisory Council, Inc., and the Texas Civil Justice League requests leave to file the accompanying brief as *amici curiae* in support of the petition for writ of certiorari.*

The Product Liability Advisory Council, Inc., is an association of industrial companies formed for the pur-

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* Respondents did not consent to the filing of this brief.

pose of submitting *amicus curiae* briefs in appellate cases involving significant issues affecting the law of product liability. Its members include about 100 major manufacturers and 300 defense attorneys.

The Texas Civil Justice League is an association comprised of attorneys, businesses, and private individuals dedicated to the just and efficient administration of civil justice in Texas. It is the largest civil justice reform organization in the nation, with over 2500 members.

This case is of interest to the Product Liability Advisory Council, Inc., and the Texas Civil Justice League because their members are the primary victims of a civil justice system the fairness of which is questioned. This case is a paradigm of unfairness. Only one state, Texas, permits its trial judges "unfettered" and unreviewable discretion to vacate a jury verdict and order a new trial.

As principal voices against arbitrary justice that affects industry, the *amici* are well suited to dramatize the effects of Texas's lawless system of civil justice and the reasons why such a system violates the Due Process Clause of the Fourteenth Amendment. Accordingly, the Product Liability Advisory Council, Inc., and the Texas Civil Justice League respectfully request that their motion for leave to file the accompanying brief as *amici curiae* be granted for these purposes.

Respectfully submitted,

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OTHER REFERENCES AND AUTHORITIES

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American Law Institute, *Enterprise Responsibility for Personal Injury—Reporters' Study* (1991) 2, 10

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BRIEF OF THE PRODUCT LIABILITY ADVISORY COUNCIL, INC., AND THE TEXAS CIVIL JUSTICE LEAGUE IN SUPPORT OF THE PETITION

INTEREST OF AMICI CURIAE

The Product Liability Advisory Council, Inc., is an association of industrial companies formed for the purpose of submitting *amicus curiae* briefs in appellate cases involving significant issues affecting the law of product liability. Its members include about 100 major manufacturers and 300 defense attorneys.

The Texas Civil Justice League is an association comprised of attorneys, businesses, and private individuals

dedicated to the just and efficient administration of civil justice in Texas. It is the largest civil justice reform organization in the nation, with over 2500 members.

Amici have a paramount interest in ensuring that civil justice in this country is meted out according to rules of fairness. When the system goes awry and produces an unfair result, as it did in this case, the victim is often (and in this case is) a business or manufacturing interest.

Arbitrary judicial procedures have a substantial and detrimental impact on American industry. This spectre, coupled with spiraling liability, has in some cases discouraged manufacturers from developing and marketing new and useful products. *See* Peter Huber & Robert E. Litan, *The Liability Maze: The Impact of Liability on Safety and Innovation*, at 7 (Brookings Inst. 1991) (reporting on American Medical Association study finding that "[i]nnovative new products are not being developed or are being withheld from the market because of liability concerns or inability to obtain adequate insurance"). *See also* American Law Institute, *Enterprise Responsibility for Personal Injury—Reporters' Study* (1991); Walter Olson, *The Litigation Explosion* (1991); Peter Huber, *Liability: The Legal Revolution and its Consequences* (1988); V. Schwartz & L. Mahshigian, *National Childhood Vaccine Injury Act of 1986: An Ad Hoc Remedy or a Window for the Future?*, 48 Ohio St. L.J. 387 (1987). The climate of uncertainty also puts American businesses at a sizeable disadvantage in their attempt to compete with foreign enterprise. *See* S. Rep. No. 321, 102d Cong., 1st Sess. 9-10 (1991) ("American manufacturers and product sellers generally pay product liability insurance rates which are 20 to 50 times higher than those of foreign competitors. This disparity is attributable in large part to the uncertainties and costs of the American tort litigation system"); H.R. Rep. No. 748, 100th Cong., 2d Sess., pt. 1, at 23-24 (1988) ("Without having to absorb

the costs of product liability exposure for most of their sales, foreign corporations have an obvious price advantage. In Japan and Europe, product liability laws are more stable, litigation less frequent, and large damage awards uncommon").

This case is a paradigm of unfairness. Texas is the only state which gives its trial judges "unfettered" and unreviewable discretion to overcome the deference traditionally afforded jury verdicts. Texas judges are given unbridled power to order a new trial for *any* reason, and without any explanation. The adverse consequences of this procedure are obvious: it imposes unnecessary, repetitive, and unrecoverable legal costs on litigants and the judicial system, and wastes time to the prejudice of both plaintiffs and defendants. Most disturbingly, it tells parties to civil suits that they cannot rely upon a concededly lawful and error-free verdict of their peers.

It is the view of *amici* that the importance of this case warrants consideration by this Court to send a clear message that due process does not tolerate lawless approaches to civil justice.

STATEMENT

This case arises out of an automobile accident. Respondents, the plaintiffs below, brought suit to recover for injuries sustained in the accident against two defendants: the driver of the impact vehicle and Toyota Motor Corporation, the manufacturer of the impact vehicle and (along with other Toyota entities) the petitioner before this Court.

The case was tried before a 12-person jury and lasted four weeks. At trial, respondents made a calculated decision to focus their case on the vehicle manufacturer. Little evidence was introduced regarding the involvement of the impact vehicle's driver in the accident. At the close of trial, the case was submitted to the jury, which delib-

erated for two days and returned a unanimous verdict in favor of both defendants.

Respondents moved for a new trial. At the hearing on that motion, respondents' counsel observed that "Texas provides trial courts with unfettered discretion to grant a new trial." Appendix to Petitioners' Brief ("Pet. App.") 42a. Counsel noted further that "Texas prohibits appellate challenges to a trial court's grant of new trial, either by mandamus or on appeal from a judgment in the second trial," and that "a trial court does not have to give her reasons for granting a new trial." *Id.* Meanwhile, the trial court judge emphasized that the outcome in favor of the vehicle manufacturer was "perfectly reasonable." *Id.* at 18a. Nevertheless, two days later the court issued a summary order setting aside the judgment and granting a new trial as to all defendants. The court offered no explanation for its decision.

Petitioners sought a writ of mandamus in the Court of Appeals for the First District of Texas. The Court of Appeals dismissed petitioners' request, relying on Texas authority holding that a "trial court has *unfettered discretion* to grant or deny a motion for a new trial." Pet. App. 1a-2a (citing *Champion Int'l Corp. v. Twelfth Court of Appeals*, 762 S.W.2d 898, 899 (Tex. 1988); *Johnson v. Fourth Court of Appeals*, 700 S.W.2d 916, 918 (Tex. 1985)). Petitioners' request for review by the Texas Supreme Court was then summarily denied. The petition for writ of certiorari followed.

REASON FOR GRANTING THE PETITION

TEXAS'S GRANT TO TRIAL JUDGES OF UNLIMITED, STANDARDLESS, AND UNREVIEWABLE DISCRETION TO VACATE JURY VERDICTS VIOLATES DUE PROCESS.

"The touchstone of due process is protection of the individual against arbitrary action of government." *Daniels v. Williams*, 474 U.S. 327, 331 (1986) (quoting *Dent v. West Virginia*, 129 U.S. 114, 123 (1889); *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974)). This case presents a paradigm of arbitrariness. A duly constituted jury of twelve Texas citizens unanimously found in favor of defendants Toyota Motor Corporation and a driver in a $19 million personal injury action. Neither the trial judge nor the plaintiffs ever suggested that the jury verdict was based on error. To the contrary: the judge concluded in a post-trial hearing that the verdict was a "perfectly reasonably outcome given the evidence" which "everyone expected might be the result of the jury trial." Pet. App. 18a, 35a. Yet, two days later the judge set aside the verdict, offering literally no explanation. The court of appeals refused even to review the decision, since under Texas law the trial court has "*unfettered discretion*" in reviewing jury verdicts. Pet. App. 1a-2a (emphasis in original). The Texas Supreme Court did the same.

This case illustrates not only the arbitrariness, but the sheer lawlessness, inherent in Texas's system for reviewing jury verdicts. The Texas procedure invites trial judges to override the considered judgment of the people—as represented by the jury—on a whim. No reasons need be provided, no standards need be observed, and no review is permitted. Nor need there be any correlation between facts, law and outcome. The trial court's decision—however capricious, illogical or (in this case) in-

explicable—is final. Indeed, nothing prevents the trial judge in this case or others from vacating the next jury verdict, and the next, and so on until she obtains a result conducive to her own predilections, whatever those may be.

It should come as little surprise that such a procedure invites "extreme results" of the sort that "jar one's constitutional sensibilities." *Pacific Mut. Life Ins. Co. v. Haslip*, 111 S. Ct. 1032, 1043 (1991). It is equally apparent, *amici* submit, that such a procedure—which we believe to be *sui generis*—violates cardinal tenets of due process upon which our system of justice depends. The Court should review this case and hold, at a minimum, that due process requires that *some* guidelines or checks be in place to circumscribe a Texas trial judge's decision whether to overturn a jury verdict—guidelines which were concededly absent in this case.

Amici recognize that the States have historically enjoyed considerable latitude in shaping their civil justice schemes. But such latitude has never been boundless. This Court has taken pains to affirm that all American governmental processes, including in particular judicial processes, are constitutionally circumscribed by "general concerns of reasonableness and adequate guidance." *Haslip*, 111 S. Ct. at 1043. This sentiment is hardly unique to *Haslip*: the Court has often had occasion to emphasize that government at all levels within our constitutional scheme must operate within "a zone of reasonableness" (*FPC v. Natural Gas Pipeline Co.*, 315 U.S. 575, 585 (1942)); that laws must as a matter of due process "provide explicit standards for those who apply them" (*Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)); and that the importance of procedural safeguards is magnified where a factfinder possesses "unusual discretion" to reach dispositive determinations (*Santosky v. Kramer*, 455 U.S. 745, 762 (1982)).

To say that Texas trial courts possess "unusual discretion" in reviewing and canceling jury verdicts is an understatement. Their discretion is unlimited. In this respect, it can fairly be said that this case presents an even more extreme example of lawlessness than the punitive damages schemes under scrutiny in *Haslip* and its progeny.[1] As petitioners' brief points out, *none* of the procedural safeguards which saved Alabama's punitive damages system from constitutional attack in *Haslip* are present here. The Alabama jury instructions at issue in *Haslip* were found to provide standards which at least "enlightened the jury" on the "nature and purpose" of punitive damages. *Haslip*, 111 S. Ct. at 1044. By contrast, Texas state courts have "unfettered discretion" and "plenary power" to grant a new trial for any reason, or for no reason at all. *Scott v. Scott*, 774 S.W.2d 307, 308 (Tex. Ct. App. 1989).[2] The Alabama Supreme Court had in place post-trial procedures for scrutinizing and, where necessary, overturning punitive awards;[3] no such

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[1] *See Mattison v. Dallas Carrier Corp.*, 947 F.2d 95 (4th Cir. 1991) (setting aside South Carolina punitive damages scheme); *Johnson v. Hugo's Skateaway*, 949 F.2d 1338 (4th Cir. 1991) (setting aside Virginia punitive damages procedure); *Garnes v. Fleming Landfill, Inc.*, 413 S.E.2d 897 (W. Va. 1991) (West Virginia law; same); *Alexander & Alexander, Inc. v. B. Dixon Evander & Assocs., Inc.*, 596 A.2d 687 (Md. Ct. Spec. App. 1991), *cert. denied*, —— A.2d —— (Md. Apr. 29, 1992) (Maryland law; same). *See also Browning-Ferris Indus. of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257 (1989); *Banker's Life & Cas. Co. v. Crenshaw*, 486 U.S. 71 (1988).

[2] By comparison, Maryland's Court of Special Appeals recently applied *Haslip* in invalidating a punitive damages award under due process analysis since, among other things, the jury had not been instructed about "the purpose of punitive damages, and the standards for determining whether and how much to award." *Alexander & Alexander, Inc.*, 596 A.2d at 712.

[3] The Alabama Supreme Court set forth specific factors for the trial court to consider and required trial courts to note *in the record* their reasons for sustaining a jury verdict or setting it aside. *Haslip*, 111 S. Ct. at 1044.

procedures were available to the defendants in this case. Finally, the Alabama Supreme Court undertook both a comparative and substantive analysis to "ensure that the [punitive] award does 'not exceed an amount that will accomplish society's goals of punishment and deterrence.' " *Haslip*, 111 S. Ct. at 1045. By contrast, the Texas system immunizes the trial court's decision entirely from appellate review. What sets this case apart, then, is not that Texas has *insufficient* legal standards governing the scrutiny of jury verdicts, or *insufficient* opportunities for appellate review, but that Texas has dispensed with standards and review mechanisms altogether.[4]

The result is a system of "justice" without rhyme or reason, one which leaves no room for the rule of law. The consequences of such a judicial process run amok are profound, quite apart from the financial and practical hardships noted by petitioners.[5]

First, the Texas scheme invites trial judges in effect to displace juries entirely. Under the Texas arrangement, a judge may override a jury's considered judgment

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[4] In *Haslip*, this Court contrasted Alabama's detailed appellate guidelines with the punitive damages schemes of two other states about which "Justices expressed concern" in previous cases. *See Haslip*, 111 S. Ct. at 1045 n.10 ("In those respective schemes, an amount awarded would be set aside or modified only if it was 'manifestly and grossly excessive,' or would be considered excessive when 'it evinces passion, bias and prejudice on the part of the jury so as to shock the conscience' ") (citations omitted). Since *Haslip*, the Court of Appeals for the Fourth Circuit has set aside two state punitive damages review standards as analogous to those questioned in *Haslip*. *See Mattison, supra*; *Johnson, supra*. Even these schemes provided for *some* appellate review; Texas provides for *none*.

[5] As petitioners point out, the Texas procedure imposes unnecessary, repetitive, and unrecoverable costs on litigants and the judicial system, and wastes time to the prejudice of both parties and the court. For instance, the trial in this case lasted over four weeks, occupied several expert and fact witnesses, and culminated in two days of jury deliberations—all for naught.

at any time for any reason, regardless of the merits of the verdict, and may order that the case be retried until the "desired" result is obtained. The judge thus becomes the factfinder, even in those cases in which the parties are entitled to a jury. Ironically, had this case been tried to a judge, the Texas rules of procedure (like the Federal Rules) would have required the court, upon request by either party, to "state in writing its findings of fact and conclusions of law." Texas Rule 297 (West 1992). *Cf.* Fed. R. Civ. P. 52. The trial court's decision would then have been subject to appellate review, as it would be in the federal system and in the courts of any other state. Yet the Texas procedure strips away all of these procedural safeguards when a trial judge decides to negate a jury verdict. This procedure makes a mockery of the jury system.

Second, by conferring on trial judges what can only be described as autocratic power in resolving jury cases, the Texas scheme divests the judicial system of its historic role as the guarantor of reasoned decision-making and fair play. Our system of justice is built on these values: it presupposes that one may be deprived of life, liberty or property only after careful deliberation and for sound reasons. And it is the Due Process Clause which, "[b]y requiring the government to follow appropriate procedures . . . promotes fairness in such decisions." *Daniels*, 474 U.S. at 331. Texas's grant to trial judges of unbridled and unreviewable authority to vacate jury verdicts defeats these objectives. Thus, petitioners here, like any other party on the wrong end of a vacated verdict in Texas, have no way of knowing, and no reason for believing, that they were deprived of a favorable jury verdict for good cause, or for any cause. Indeed, since no explanation was provided by the trial judge, and since no legal error was ever alleged or established, one can only speculate as to the rationale underlying the trial judge's decision. Worse still, under the Texas scheme the ration-

ale—whether it be motivated by political, social, ideological, or other concerns—is *irrelevant.*

Finally, the unlimited discretion which Texas confers on trial judges in reviewing jury verdicts cannot help but undermine confidence in the judicial process at a time when the courts' effectiveness in meting out efficient justice is increasingly the subject of serious question.[6] Our society traditionally has placed substantial confidence in the courts to distribute justice. The Texas procedure—whereby a judge can deem a verdict "perfectly reasonable" on Wednesday yet set it aside on Friday without explanation—erodes that confidence. While this Court cannot and should not be asked to constitutionalize state trial systems, it must step in where, as here, a state casts aside the rule of law in favor of "unfettered discretion," to use Texas's own description, or "unlimited judicial discretion," as put by this Court. *Haslip*, 111 S. Ct. at 1043. It should step in here.

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[6] *See* President's Council on Competitiveness Report, *Agenda for Civil Justice Reform*, at 2 (1991) ("Unrestrained litigation necessarily exacts a terrible toll on the U.S. economy. . . . The current *procedural* system adds costs by prolonging resolution of disputes and encouraging wasteful litigation") (emphasis in original); American Law Institute, *Enterprise Responsibility for Personal Injury—Reporters' Study* (1991). *See also* Report of the Special Committee of Punitive Damages, Section of Litigation, American Bar Association, *Punitive Damages: A Constructive Examination* (1986); American College of Trial Lawyers, *Report on Punitive Damages of the Committee on Special Problems in the Administration of Justice* (1989).

CONCLUSION

Texas stands alone in permitting its trial court judges "unfettered" and unreviewable discretion to vacate a jury verdict. No other state condones such arbitrary and boundless judicial discretion. Nor does the Constitution. The petition for a writ of certiorari should be granted.

Respectfully submitted,

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